

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

In Re:

DHC REALTY, LLC,

Debtor,

DHC REALTY, LLC, CHOWAIKI
HOLDINGS, LLC, EL PASO DHC
ENTERPRISES, LLC, EL PASO DHC
ENTERPRISES FAR EAST, LLC,
EL PASO DHC ENTERPRISES
WEST, LLC, and DAVID CHOWAIKI

Plaintiffs,

v.

ARMANDO ARMENDARIZ,
YVETTE ARMENDARIZ, and
HECTOR ARMENDARIZ,

Defendants.

ARMANDO ARMENDARIZ and
YVETTE ARMENDARIZ

Counterclaimants

v.

DHC REALTY, LLC, CHOWAIKI
HOLDINGS, LLC, EL PASO DHC
ENTERPRISES, LLC, EL PASO DHC
ENTERPRISES FAR EAST, LLC,
EL PASO DHC ENTERPRISES
WEST, LLC, DAVID CHOWAIKI, and
HILEL CHOWAIKI

Counterdefendants

Case No.: 11-30977-hcm

Adversary No.: 12-03012-hcm

**RESPONSE TO PLAINTIFFS' SECOND MOTION TO COMPEL AND FOR
SANCTIONS AGAINST HECTOR ARMENDARIZ**

TO THE HONORABLE COURT:

Defendants Armando Armendariz, Yvette Armendariz, and Hector Armendariz (collectively "Defendants"), by their undersigned counsel, file the following Response to Plaintiffs' Second Motion to Compel and for Sanctions against Hector Armendariz ("Motion" or "Motion to Compel"), and in support of thereof show:

1. On January 22, 2013 Plaintiffs filed a Motion to Compel against Defendant Hector Armendariz ("Mr. Armendariz") [dkt no. 49].
2. On February 13, 2013, the Court denied Plaintiffs' Motion to Compel. The Court subsequently issued an order denying Plaintiffs' Motion to Compel on February 16, 2013 [dkt no. 61].
3. Since February 13, 2013, Plaintiffs have made no attempts to contact Defendants to resolve their alleged discovery disputes. Plaintiffs have not served any further requests for discovery.
4. On March 19, 2013, Plaintiffs filed their Second Motions to Compel against each of the defendants [dkt nos. 79, 80, and 81] which are duplicative of their first motions to compel.
5. Per Federal Rules of Civil Procedure ("FRCP"), Rule 37(a)(1), Plaintiffs were obliged to confer or attempt to confer prior to resolve any alleged discovery disputes prior to filings their Motion:

The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

6. Plaintiffs' Motion should be denied for failing to meet the requirements of FRCP, Rule 37(a)(1) by Plaintiffs not making any attempt to confer prior to filing their Motion.

7. Nothing has changed since the Court previously ruled on this same matter.

8. Plaintiffs' Motion should be denied as the Court has already ruled on this matter.

9. Defendants refer the Court to their Response previously made on this matter [dkt no. 58] to serve as a further response to Plaintiffs present Motion, if any is necessary, and attach said Response herewith as Exhibit 1.

10. Defendants are willing to cooperate in a civil manner with Plaintiffs to resolve any alleged discovery disputes, however, Plaintiffs have brought their alleged disputes before the Court without any good faith effort to attempt to resolve them prior to filing their Second Motions to Compel.

11. Defendants cannot state any more clearly, that there is no document that they are not willing to provide to Plaintiffs either by furnishing copies or by making them available for inspection and copying, provided that those which pertain to financial or other personal records (such as banking records, real estate records, telephone records, etc., which contain very personal and private information) are protected by a confidentiality agreement. A proposed standard confidentiality order is attached hereto as Exhibit 2.

12. It seems Plaintiffs and Plaintiffs' counsel are not presenting this Motion in good faith.

13. Plaintiffs' Motion should be denied as the Court has already issued its ruling on this matter. Plaintiffs' Motion should further be denied for failure to comply with FRCP,

Rule 37(a)(1), by failing to make any good faith effort to confer prior to filing their Motion.

WHEREFORE, Defendants respectfully request that Plaintiffs' Motion be denied, and that Defendants be granted any further relief to which they may be justly entitled.

Respectfully submitted,

FIRTH♦JOHNSTON♦MARTINEZ

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/s/ Christopher R. Johnston
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/s/ Sidney J. Diamond
SIDNEY J. DIAMOND
State Bar No. 5803000

CERTIFICATE OF SERVICE

I, Christopher R. Johnston, do hereby certify that on April ____, 2013, a true and correct copy of the foregoing Response to Plaintiffs' Second Motion to Compel and for Sanctions against Hector Armendariz, was served via electronic means as listed on the Court's ECF noticing system or by depositing the same in the United States Mail, properly addressed and postage prepaid, to the following parties:

THE DEBTOR:

DHC Realty, LLC
301 Williams
El Paso, TX 79901

THE DEBTOR'S ATTORNEY:

Corey W. Haugland
P.O. Box 1770
El Paso, TX 79949-1770

/s/ Christopher R. Johnston
CHRISTOPHER R. JOHNSTON